

2001 WL 34842298 (Me.Super.) (Trial Pleading)
Superior Court of Maine.

Joan L. SIEGEMUND, Plaintiff,
v.
Peter SHAPLAND, and Peabody & Arnold, LLP, Defendants.

Docket No. 00001557.
October 15, 2001.

State of Maine Cumberland, ss.

Complaint and Request for Jury Trial

NOW COMES Plaintiff, Joan L. Siegemund, and for her Complaint states as follows:

PARTIES

1. Joan Siegemund is an individual residing in Pacific Palisades, California, daughter and heir of Rose Winston who died while residing in Machias, Maine in 1993.
2. Peter Shapland is an attorney with the law firm of Peabody & Arnold, LLP, with offices located in Portland, Cumberland County, State of Maine.
3. Peabody & Arnold, LLP is a law firm with offices located in Portland, Cumberland County, State of Maine.

VENUE

4. Venue of this matter is proper pursuant to [4 M.R.S.A. § 155\(4\) and \(5\)](#), permitting venue in the County where the Defendant Peabody & Arnold, LLP, has a place of business.

FACTUAL ANALYSIS

(The Person of Rose Winston)

5. In 1987, Dr. Rose Winston, was a resident of Boston, Massachusetts, with properties located at 133 Commonwealth Avenue, and 47-53 Hereford Street, Boston, Massachusetts. Dr. Winston's date of birth was XX/XX/1904.
6. On September 3, 1987, Rose walked to the Massachusetts General Hospital where she collapsed and was hospitalized for a period of four (4) weeks.
7. At no time prior to September 3, 1987, had Dr. Winston been diagnosed with dementia or other brain disease, and in fact, conducted her personal and business affairs on her own. Dr. Winston was a board-certified neurologist, and astute businesswoman, amassing a fortune, in excess of five (5) million dollars in 1987.

8. Upon information and belief, Dr. Winston's eldest daughter, Diane Crocker ("Diane"), took steps to have herself appointed as Dr. Winston's guardian. Joan Siegemund ("Joan") did not want any guardian appointed, but specifically did not want her sister, Dr. Diane Crocker, appointed because Diane and Dr. Winston did not get along. Therefore, Joan, Diane and Attorney John Thornton were appointed as temporary guardians.

9. Ultimately, in November, 1987, the Suffolk County Probate Court appointed Ira Nagel as guardian of the person of Dr. Rose Winston, over Joan's objection.

10. Upon information and belief, under Ira Nagel's care, Dr. Winston was unlawfully prescribed Haldol, an antipsychotic with potentially devastating side effects to older individuals. Upon information and belief, Dr. Winston began hallucinating shortly after Nagel's appointment, and as the result of the improper medication. Further, the administering of antipsychotic medication absent consent was against federal and state law at that time.

11. Upon information and belief, David O'Brien, an individual unqualified to provide caregiving to Dr. Winston, was nevertheless appointed by Nagel to administer medication and oversee caregiving.

12. Upon information and belief, under Ira Nagel's care in July, 1988, Dr. Winston lapsed into a near-coma, and required an injection of epinephrine to regain consciousness. Nagel had retained the services of Medical Personnel Pool to provide. twenty-four (24) hour care. Upon information and belief, Medical Personnel Pool provided incompetent and inadequate care, at all times known by Nagel.

13. Upon information and belief, Dr. Winston was improperly restrained by being tied into a wheelchair during much of 1988. Attorneys Nagel and Howe were aware of this **abusive** and unnecessary conduct.

14. During this period, Joan was precluded from communicating with her mother by the nursing staff providing 24-hour care, apparently upon the instructions of Ira Nagel or Diane Crocker, with the knowledge of Ira Nagel. In part, this was to conceal the **abusive** and improper treatment of Dr. Winston.

15. Attorney Stephen Howe was appointed as the Guardian of the Property of Dr. Winston. The real property was valued at over four (4) million dollars at the time of his appointment in 1987.

16. As guardians over the person and the property, Attorneys Nagel and Howe had a fiduciary relationship with Dr. Winston. That duty required that at all times they act in the best interests of Dr. Winston. They both breached those duties.

17. From November, 1987 to December, 1989, Dr. Winston was physically mistreated by being given improper, debilitating medications, being tied into a wheelchair, and being held "incommunicado" with respect to Joan, who at all pertinent times has resided in California, as well as Joan's children and husband. One of Joan's daughters resided in Boston, a block away from her grandmother, and was specifically prohibited from having access to Dr. Winston.

18. Once the antipsychotic medications given to Dr. Winston were discontinued pursuant to a Court Order obtained by Joan, and the **abusive** treatment stopped, Dr. Winston's health returned until she was ambulatory by early 1989. Dr. Winston also became much more rational at that time.

19. Joan and her family members explored a number of assisted living facilities and located several she thought appropriate. Joan provided Nagel with this information, as well as offering to care for her mother herself, in California. Unbeknownst to Joan, however, Stephen Howe introduced Audrey Pitman, the daughter of a client of Howe's, and a woman with very limited experience in **elder** care, to Dr. Winston. Nagel hired her to care for Dr. Winston in December, 1989, at which time the Medical Personnel Pool was dismissed.

20. Ms. Pitman had no medical training or certification. Nevertheless she was hired to care for Dr. Winston twenty-four (24) hours a day, seven (7) days a week with no respite care plans or provisions. Indeed, it was agreed upon that Ms. Pitman would provide 24/7 care, as her only caregivers. Dr. Winston suffered numerous ailments, including heart problems, which required consistent medical attention.

21. More incredibly, Howe then determined, as guardian of the property, not the person, that Dr. Winston should move to Machias, Maine, where Audrey Pitman was building a house. Dr. Winston was moved there in May, 1990, and resided there until her death in 1993.

22. Howe, and later Nagel, refused to tell Joan where her mother was being taken to reside, although they told her it was somewhere in Maine.

23. Nagel was, in fact, unaware of those arrangements when they were made, and did not authorize the move to Maine. His authorization was necessary as guardian of the person of Rose Winston.

24. Eventually, Joan was able to find out where her mother was being kept, from Audrey Pitman, and spoke to Dr. Winston approximately twice weekly until Dr. Winston's stroke in 1993.

25. Dr. Winston received little medical care in Machias. Her only caregiver was Audrey Pitman, who also cared for her own aged mother. Dr. Winston also received inadequate dental care, and suffered dramatically poor dentition, and resulting pain.

26. In the Fall of 1990, Audrey Pitman sought respite care for Dr. Winston while Nagel and Howe had Audrey close up Dr. Winston's Boston apartment (Joan was not asked to close the apartment), thus leaving Dr. Winston without care. Dr. Winston was moved to Resthaven, a nursing facility then under investigation by the Attorney General's office.

27. At no time did Nagel visit or otherwise ascertain the fitness of Resthaven to care for Dr. Rose Winston as a respite facility, and in fact visited Machias only on very limited occasions. Resthaven was at all times inappropriate for the respite care of Rose Winston. Had Nagel investigated the facility he would have known that it was an inappropriate facility. In the alternative, had Nagel consulted properly with a physician, Nagel would have understood some of the issues of **elder** care, including the difficulty of "change" experienced by people with dementia.

28. During Dr. Winston's Resthaven stay, Dr. Winston was photographed restrained in a wheelchair, with a drug-crazed look on her face, and suffered **abusive** dehumanizing treatment causing her pain, humiliation, degradation, hopelessness and despair. At all times pertinent hereto, it was entirely foreseeable that Rose Winston would not, and could not, be properly cared for at Resthaven. Indeed, moving an individual in Rose's condition at that time is a very disruptive experience and must be handled both carefully and properly, which it was not.

29. Ultimately, an indictment was brought by the State of Maine against Resthaven and its principals, in part as a result of the **abuse** inflicted upon Dr. Winston by management and staff.

30. Given the care needs of Dr. Winston, Audrey Pitman was unable to provide the level of care necessary to Dr. Winston. Nagel was unable, given the distance, to carry out his duties as guardian.

31. Further, by moving Dr. Winston to Machias, Nagel made it almost impossible for family members to meet with her or otherwise continue a meaningful relationship, beneficial to both parties. The move also made appropriate respite care much more difficult, if not impossible to obtain. Nagel also, by allowing the move, improperly turned over decision-making authority to Audrey Pitman. Ms. Pitman relied exclusively on money received by Nagel and Howe to support herself thereby clouding her independent judgment with respect to how Dr. Winston should best be cared for.

32. On or about February 19, 1993, Dr. Winston suffered a stroke which paralyzed much of her right side, and made swallowing difficult. For four (4) to six (6) days thereafter, Dr. Winston, gagging each time she tried to swallow, suffered without medication, food, drink; nursing care, medical attention, or any form of adequate care. During that time she experienced horrendous pain, and was given no pain medication, and was in reality simply left to die. The decision to deny medical care was made by Audrey Pitman and Ira Nagel.

33. Prior to the February 19, 1993 major stroke, Dr. Winston had experienced a fever for several weeks, and symptoms consistent with the suffering of several smaller strokes. Dr. Winston did not receive medical treatment for that illness either. Again, Audrey Pitman and Ira Nagel denied her treatment, and Dr. Winston suffered as a result.

34. On February 23, 1993, four (4) days after the February 19, 1993 stroke that paralyzed Dr. Winston's entire right side, and at least three (3) weeks after onset of the first signs of illness, Dr. Winston was finally, and only at the demand of Joan Siegemund, taken to the hospital. A feeding tube was placed in her stomach, and then incredibly at Ira Nagel's demand, Dr. Winston was discharged and returned to Audrey Pitman for home care. There, Dr. Winston, experiencing pain and trauma, pulled out her feeding tube.

35. On February 24, 1993, five (5) days after a major stroke, Dr. Winston was admitted to the Community Health Hospital in Machias, unable to swallow without choking, and suffering severe right side paralysis among other difficulties, including dehydration and fever.

36. However, on March 5, 1993, Dr. Winston was again discharged, upon information and belief, to the care of Audrey Pitman, an untrained and unlicensed caregiver, at the request of Nagel.

37. The only reason Dr. Winston received any hospitalization was because Joan demanded that Audrey take her mother to the hospital.

38. Subsequent to the March 5, 1993 discharge, Joan again demanded that Dr. Winston be taken to the hospital. Dr. Winston died at the Community Health Hospital on March 18, 1993.

39. Thereafter, two (2) death certificates issued - one declaring Dr. Winston cremated at the request of Stephen Howe, who authorized the cremation.

40. Another death certificate indicates that Dr. Winston was to be buried. To date there is no conclusive evidence of either disposition of the remains of Dr. Rose Winston.

41. At all pertinent times hereto, Rose Winston had sufficient funds to be cared for in the highest quality nursing facility. Instead, Nagel utilized twenty-four (24) hour care for two (2) years at an exorbitant cost, and then utilized an unlicensed, untrained single caregiver at a cost comparable to nursing/assisted living facilities.

42. At all times pertinent hereto, Dr. Rose Winston, upon information and belief, had medicare and supplemental medical care coverage for in-hospital treatment and home treatment by skilled nurses.

43. The withholding of medical care for Dr. Winston, and the improper care and treatment of Dr. Winston caused her pain, hopelessness, despair, emotional distress, physical distress, loss of quality of life and loss of relationship with her family members.

(The Property)

44. Shortly after Howe took over as guardian of the property in 1988, he took steps to sell the Hereford Street properties for \$2.2 million. The Hereford Street properties were income-producing properties, located at 47-53 Hereford Street, Boston, Massachusetts. The sale did not go forward for various reasons. Thereafter, Howe entered into a lease-purchase arrangement with Mr. Charles Patsos. This arrangement was entered into without any due diligence on the part of Howe, or adequate investigation of any kind into the financial capabilities of Mr. Patsos. Indeed, Mr. Patsos was not financially viable.

45. The lease-purchase agreement required monthly lease payments of approximately \$10,000. Howe collected only the first month's rent, and then failed to collect any further amounts, leading eventually to a loss to the estate of \$3 10,000, almost three (3) years rent. Further, Patsos destroyed the properties, including burning and other destruction, until the properties were finally sold at auction for \$900,000. All destruction was committed while Howe was guardian over the properties and as such, he had a duty to preserve the properties and sustain their values.

46. Upon information and belief, Howe ordered the improper eviction of a number of tenants at Hereford Street, which were rent-controlled properties. As a result of the improper evictions, tenants were physically and financially injured and several lawsuits were filed against Dr. Winston, and settled for significant amounts using Dr. Winston's funds, as well as the expenditure of significant legal fees. Howe was, at all pertinent times, responsible for the conduct of Dr. Winston's financial affairs, and breached his duty to Dr. Winston.

47. Upon information and belief, even the auction of the Hereford Street properties itself was improperly conducted in that it was not advertised in a reasonable fashion.

48. The total loss for the properties on Hereford Street exceeds \$2 million.

49. Howe also failed to properly account for expenditures, and unreasonably expended significant sums of money. Howe also ultimately caused other properties to be sold at below fair market value, thereby further devaluing the estate.

COUNT I

Breach of Fiduciary Duty and Negligence, Negligent and Intentional Infliction of Emotional Distress

50. Plaintiff Joan Siegemund repeats and realleges Paragraphs 1-49 above as if set forth more fully herein.

51. As the personal representative of the estate of Rose Winston, Peter Shapland, and Peabody & Arnold, LLP owe a fiduciary duty to the heirs of that estate, and to the estate itself.

52. The guardians, Howe and Nagel, as well as guardian *ad litem* James DiGiacomo, owed a fiduciary duty to Dr. Winston during her lifetime. They also owed Rose Winston the duties of due care, loyalty, and to act as a reasonable and prudent fiduciary and attorney in caring for the person of Rose Winston and the property of Rose Winston. All three breached those duties, causing Dr. Winston pain and suffering, **abuse**, physical distress and injury, emotional distress, improper and inadequate medical attention, poor dental care, loss of family interaction, and economic loss and distress.

53. Stephen Howe and Ira Nagel both fraudulently concealed their tortious conduct by failing and refusing to properly disclose medical records, financial records, court records, and other information for the purpose of concealing their misdeeds. Indeed, to date only bits and pieces of information have been disclosed revealing in part the complained-of conduct.

54. The Defendants have breached their duty by failing to pursue the claims held by Rose Winston, and the estate of Rose Winston, against Ira Nagel, Stephen Howe, and James DiGiacomo and their respective law firms, thereby diminishing dramatically the assets of the estate of Rose Winston by a very large sum. In turn, the Defendants have breached their duty to

the Plaintiff as an heir to the Estate of Rose Winston. Further, Defendants have intentionally withheld information requested by Plaintiff pertaining to her mother's physical and financial mismanagement at the hands of Howe and Nagel.

55. Plaintiff has both requested and demanded that the aforementioned claims be pursued by Defendants. The claims which should have been pursued by the Defendants include: (1) negligence; (2) breach of fiduciary duty; (3) negligent and intentional infliction of emotional distress; (4) civil RICO (including treble damages); (5) battery; (6) fraud; and (7) violation of the Consumer Protection Act and Trade Practices.

56. Instead of pursuing the claims, Defendant Peter Shapland stated that "I promised certain people I would not go after them." Such conduct is both intentional and malicious, or of such a nature that malice can be inferred.

57. As a direct and proximate result of the breach of fiduciary duty by the Defendants, Defendants' negligence, and Defendants intentional misconduct, Plaintiff has suffered extreme emotional distress, as well as significant financial loss.

WHEREFORE, Plaintiff demands judgment in the form of compensatory and exemplary damages, plus interests and costs, and reasonable attorney's fees.

COUNT II

(Breach of Fiduciary Duty and Negligent and Intentional Infliction of Emotional Distress)

58. Plaintiff Joan Siegemund repeats and realleges Paragraphs 1-57 above as if set forth more fully herein.

59. Defendants owed Plaintiff a fiduciary duty, as well as to act as a reasonable and prudent attorney, to provide the Plaintiff with information necessary for the Plaintiff to determine the nature of Plaintiff's mother's health and care during the years of guardianship, which were refused to the Plaintiff during the guardianship.

60. As a direct and proximate result of the Defendants' refusal to provide appropriate and necessary information to the Plaintiff, even after request and demand, Plaintiff has suffered harm.

61. Defendants' conduct was so extreme and outrageous as to be intolerable in a civilized society.

62. Plaintiff has suffered extreme emotional distress, physical injury, and economic harm, including legal fees expended to obtain what little information has ever been provided.

63. The Defendants failed and intentionally refused to provide said information in order to protect former guardians Howe and Nagel, and guardian *ad litem* DeGiacomo, from liability for their extreme and outrageous actions, consisting of **elder abuse** and destruction of the value of the estate.

WHEREFORE, Plaintiff demands judgment against Defendants in the form of compensatory and exemplary damages, and costs and interest, including reasonable attorneys' fees.

COUNT III

(Consumer Protection Act - Unfair Trade Practices Act)

64. Plaintiff Joan Siegemund repeats and realleges Paragraphs 1-63 above as if set forth more fully herein.

65. Guardians Howe and Nagel, and guardian *ad litem* DeGiacomo, engaged in unfair trade practices in the conduct towards Dr. Rose Winston.

66. Such unfair trade practices are actionable pursuant to State laws, and Defendants, as personal representatives, had an obligation to act as prudent and careful attorneys, to file a complaint against Howe, Nagel and DiGiacomo for unfair trade practices.

67. Plaintiff has been harmed by Defendants' breach of their duty to act as prudent and careful attorneys and to preserve the decedent's estate by bringing suit against the multiple wrong-doers.

68. Defendants' conduct in protecting Howe, Nagel and DiGiacomo was so outrageous as to be unacceptable in a civilized society.

WHEREFORE, Plaintiff demands judgment in the form of compensatory and exemplary damages, interest and costs and attorney's fees and additional rewards as permissible under the Unfair Trade Practices Act and Consumer protection Act.

JURY DEMAND

69. Plaintiff hereby demands trial by jury on all issues and Counts so triable.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.